

Social Security Administration

§ 404.430

until it is shown to the satisfaction of the Administration that his taxable year is not a calendar year.

[32 FR 19159, Dec. 20, 1967, as amended at 41 FR 13912, Apr. 1, 1976; 47 FR 46690, Oct. 20, 1982; 52 FR 8249, Mar. 17, 1987; 57 FR 59913, Dec. 17, 1992]

§ 404.430 Excess earnings defined for taxable years ending after December 1972; monthly exempt amount defined.

(a) *Method of determining excess earnings for years ending after December 1972.* For taxable years ending after 1972, an individual's excess earnings for a taxable year are 50 percent of his or her earnings (as described in § 404.429) for the year which are above the exempt amount. For an individual who has attained retirement age, as defined in section 216(l) of the Act, excess earnings for a taxable year beginning after December 31, 1989, are 33⅓ percent of his or her earnings (as described in § 404.429) for the year which are above the exempt amount. For deaths after November 10, 1988, an individual who dies in the taxable year in which he or she would have attained retirement age shall have his or her excess earnings computed as if he or she had attained retirement age. The exempt amount is obtained by multiplying the number of months in the taxable year (except that the number of months in the taxable year in which the individual dies shall be 12, if death occurs after November 10, 1988) by the following applicable monthly exempt amount.

(1) \$175 for taxable years ending after December 1972 and before January 1974;

(2) \$200 for taxable years beginning after December 1973 and before January 1975; and

(3) The exempt amount for taxable years ending after December 1974, as determined under paragraphs (c) and (d) of this section. However, earnings in and after the month an individual attains age 72 will not be used to figure excess earnings for retirement test purposes. For the employed individual, wages for months prior to the month of attainment of age 72 are used to figure the excess earnings for retirement test purposes. For the self-employed individual, the pro rata share of the net earnings or net loss for the taxable

year for the period prior to the month of attainment of age 72 is used to figure the excess earnings. If the beneficiary was not engaged in self-employment prior to the month of attainment of age 72, any subsequent earnings or losses from self-employment in the taxable year will not be used to figure the excess earnings. Where the excess amount figured under the provisions of this section is not a multiple of \$1, it is reduced to the next lower dollar. (All references to age 72 will be age 70 for months after December 1982.)

Example 1. The self-employed beneficiary attained age 72 in July 1979. His net earnings for 1979, his taxable year, were \$12,000. The pro rata share of the net earnings for the period prior to July is \$6,000. His excess earnings for 1979 for retirement test purposes are \$750. This is computed by subtracting \$4,500 ($\375×12), the exempt amount for 1979, from \$6,000 and dividing the result by 2.

Example 2. The beneficiary attained age 72 in July 1979. His taxable year was calendar year 1979. His wages for the period prior to July were \$6,000. From August through December 1979, he worked in self-employment and had net earnings in the amount of \$2,000. His net earnings from self-employment are not used to figure his excess earnings. Only his wages for the period prior to July 1979 (\$6,000) are used to figure his excess earnings. As in example 1, his excess earnings are \$750.

Example 3. The facts are the same as in example 2, except that the beneficiary worked in self-employment throughout all of 1979 and had a net loss of \$500 from the self-employment activity. The pro rata share of the net loss for the period prior to July is \$250. His earnings for the taxable year to be used in figuring excess earnings are \$5,750.

This is computed by subtracting the \$250 net loss from self-employment from the \$6,000 in wages. The excess earnings are \$625 ($(\$5,750 - \$4,500) \div 2$).

(b) *Monthly exempt amount defined.* The retirement test monthly exempt amount is the amount of wages which a social security beneficiary may earn in any month without part of his or her monthly benefit being deducted because of excess earnings. For benefits payable for months after 1977, the monthly exempt amount applies only in a beneficiary's grace year or years. (See § 404.435 (a) and (c)).

(c) *Method of determining monthly exempt amount for taxable years ending after December 1974.* (1) Except as provided under paragraph (d) of this section, for purposes of paragraph (a)(3) of

this section, the applicable monthly exempt amount effective for an individual's taxable year that ends in the calendar year after the calendar year in which an automatic cost-of-living increase in old-age, survivors, and disability insurance benefits is effective is the larger of—

(i) The exempt amount in effect for months in the taxable year in which the exempt amount determination is being made; or

(ii) The amount determined by:

(A) Multiplying the monthly exempt amount effective during the taxable year in which the exempt amount determination is being made by the ratio of:

(1) The average amount, per employee, of the taxable wages of all employees as reported to the Commissioner for the first calendar quarter of the calendar year in which the exempt amount determination is made, to

(2) The average amount, per employee, of the taxable wages of all employees as reported to the Commissioner for the first calendar quarter of the most recent calendar year in which an increase in the exempt amount was enacted or a determination resulting in such an increase was made, and

(B) Rounding the result of such multiplication:

(1) To the next higher multiple of \$10 where such result is a multiple of \$5 but not of \$10, or

(2) to the nearest multiple of \$10 in any other case.

(2) For purposes of paragraph (c)(1) of this section, *reported for the first calendar quarter* means reported for such first calendar quarter and posted to the earnings records by the Commissioner on or before the last day of the Social Security Administration's quarterly updating operations in September of the same year. Earnings items received or posted thereafter are not counted even though they pertain to the first quarter.

(d) *Method of determining monthly exempt amount for taxable years ending after December 1977 for beneficiaries, age 65 or over.* (1) For purposes of paragraph (a)(3) of this section, for all months of taxable years ending after 1977, the applicable monthly exempt amount for an individual who has attained (or, but

for the individual's death occurring after November 10, 1988, would have attained) retirement age as defined in section 216(l) of the Act before the close of the taxable year involved is—

(i) \$333.33 $\frac{1}{3}$ for each month of any taxable year ending in 1978;

(ii) \$375 for each month of any taxable year ending in 1979;

(iii) \$416.66 $\frac{2}{3}$ for each month of any taxable year ending in 1980; and

(iv) \$458.33 $\frac{1}{3}$ for each month of any taxable year ending in 1981;

(v) \$500 for each month of any taxable year ending in 1982;

(vi) \$550 for each month of any taxable year ending in 1983;

(vii) \$580 for each month of any taxable year ending in 1984;

(viii) \$610 for each month of any taxable year ending in 1985;

(ix) \$650 for each month of any taxable year ending in 1986;

(x) \$680 for each month of any taxable year ending in 1987;

(xi) \$700 for each month of any taxable year ending in 1988;

(xii) \$740 for each month of any taxable year ending in 1989; and

(xiii) \$780 for each month of any taxable year ending in 1990.

(2) Fractional amounts listed in paragraph (d)(1) of this section shall be rounded to the next higher whole dollar amount, unless the individual shows that doing so results in a different grace year (see § 404.435 (a) and (c)).

[40 FR 42865, Sept. 17, 1975; 40 FR 45805, Oct. 3, 1975, as amended at 45 FR 48117, July 18, 1980; 45 FR 58107, Sept. 2, 1980; 48 FR 4282, Jan. 31, 1983; 55 FR 37461, Sept. 12, 1990; 62 FR 38450, July 18, 1997]

§ 404.434 Excess earnings; method of charging.

(a) *Months charged.* For purposes of imposing deductions for taxable years after 1960, the excess earnings (as described in § 404.430) of an individual are charged to each month beginning with the first month the individual is entitled in the taxable year in question and continuing, if necessary, to each succeeding month in such taxable year until all of the individual's excess earnings have been charged. Excess earnings, however, are not charged to